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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/754,919	01/10/2004	Syde A. Taheri	VNUS.017A	8233

20995 -7590 05/01/2007  
KNOBBE MARTENS OLSON & BEAR LLP  
2040 MAIN STREET  
FOURTEENTH FLOOR  
IRVINE, CA 92614

EXAMINER
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DAWSON, GLENN K

ART UNIT	PAPER NUMBER
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3731

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	05/01/2007	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 05/01/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com  
eOAPilot@kmob.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/754,919	TAHERI, SYDE A.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Glenn K. Dawson	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 February 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 8-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 20-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>01-12-2007</u>  | 6) <input type="checkbox"/> Other: _____                          |

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02-26-2007 has been entered.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4,20-23,27-29,31,33-37 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by DiMatteo, et al.-6440164.

DiMatteo discloses a device including a bioabsorbable stent body with a lumen and bio-absorbable blocking means comprising bioabsorbable valve leaflet frames. As at least a portion of each of the leaflets is bioabsorbable, the examiner contends that a

Art Unit: 3731

bioabsorbable portion blocks the blood flow. Even though 112 6<sup>th</sup> is being invoked, the examiner contends that the prior art meets this limitation as the structure would be an equivalent because the structures have substantially the same result, (blocking blood flow), do it in substantially the same manner, (physically closing off the lumen of the stent), and culminate in a substantially equivalent result (closure frame is absorbed and the valve itself is replaced by body tissue cells). The blocking means attaches at one end of the stent but extends to a location between the ends. The valve moves from a position allowing blood to flow through the stent and a closed position blocking blood flow therethrough.

Claims 1-4,28 and 37 are rejected under 35 U.S.C. 102(e) as being anticipated by Devellian-2005/0070952.

Devellian discloses a bioabsorbable stent 32 and a bioabsorbable closure 21. The stent is a hollow tube. The device though placed in an LAA, if placed in a vessel would act to occlude blood flow through the vessel. The position of 21 could be everted and is therefore adjustable.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 5,29,30,33-36 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Devellian-'952 in view of Duran-'297

Devellian discloses the invention as claimed with the exception of the bioabsorbable material being polylactic acid. Duran discloses such a material. It would have been obvious to have formed the bioabsorbable portions of Devallian's device out of polylactic acid as Duran discloses that it is a good material for forming a bioabsorbable structure because it has a predictable degradation rate. To have made the side wall of the stent body a non-filtering material would have been obvious in order

to prevent fluid or embolic material from entering the interior of the stent body which could increase internal pressure and risk expulsion or damage to the interior of the LAA.

Claims 5,24,30 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over DiMatteo, et al.-'164 in view of Duran-'297

DiMatteo, et al. discloses the invention as claimed with the exception of the bioabsorbable material being polylactic acid. Duran discloses such a material. It would have been obvious to have formed the bioabsorbable portions of DiMatteo's device out of polylactic acid as Duran discloses that it is a good material for forming a bioabsorbable structure because it has a predictable degradation rate.

Claims 6,7,25,26,32 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over DiMatteo, et al.-'164 in view of Soetikno, et al.-2002/0143387.

DiMatteo discloses the invention as claimed with the exception of the drawstring closure. Soetikno discloses another elongated tubular stent and a drawstring located at one end. This drawstring can be incorporated into any stent. It would have been obvious to have added a drawstring to the stent of DiMatteo in order to allow it to be easily re-positioned. When combined, the drawstring could be used to pull the end of the stent tight enough to prevent or substantially stop the flow of blood through the stent since the modified stent includes an impervious layer over the stent frame.

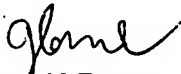
### ***Conclusion***

Art Unit: 3731

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn K. Dawson whose telephone number is 571-272-4694. The examiner can normally be reached on M-Th 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Glenn K Dawson  
Primary Examiner  
Art Unit 3731

Gkd  
18 April 2007